

CENTRAL ARBITRATION COMMITTEE
TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 1992
SCHEDULE A1 - COLLECTIVE BARGAINING: RECOGNITION
DECISION ON WHETHER TO ACCEPT THE APPLICATION

The Parties:

Unite the Union

and

Cofely Ltd

Introduction

1. Unite (the Union) submitted an application to the CAC dated 12 December 2014 that it should be recognised for collective bargaining by Cofely Ltd (the Employer) for a bargaining unit comprising "All workers employed at the Jaguar Land Rover Plant, Speke Boulevard, Liverpool, excluding management". The CAC gave both parties notice of receipt of the application on 18 December 2014. The Employer submitted a response to the application on 24 December 2014 which was copied to the Union.

2. In accordance with section 263 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act), the CAC Chairman established a Panel to deal with the case. The Panel consisted of Professor Linda Dickens MBE, as chair of the Panel, and, as Members, Mr Bill Lockie and Mr Gerry Veart. The Case Manager appointed to support the Panel was Sharmin Khan but for the purpose of the membership check and this decision was Linda Lehan.

3. The CAC Panel extended the acceptance period in this case. The initial period expired on 5 January 2015. The acceptance period was extended to 21 January 2015 in order to enable the CAC to carry out a membership check and provide more time for the Panel to consider all the evidence before arriving at a decision.

Issues

4. The Panel is required by paragraph 15 of Schedule A1 to the Act (the Schedule) to decide whether the Union's application to the CAC is valid within the terms of paragraphs 5 to 9; is made in accordance with paragraphs 11 or 12; is admissible within the terms of paragraphs 33 to 42 of the Schedule; and therefore should be accepted.

The Union's application

5. The Union stated that it had sent a number of informal requests by e-mail commencing in January 2014 to the Employer and a formal request letter for recognition on 8 July 2014. The Union stated that after several months the Employer agreed to discuss a Partnership Agreement but attempts to agree a mutually acceptable agreement which included negotiating rights failed. The Union enclosed copies of correspondence that had been exchanged between the parties.

6. The Union stated in its application that a total of 11,000 workers were employed by the Employer in the UK. The Union stated that there were 24 workers in the proposed bargaining unit of which 21 were members of the Union. When asked to provide evidence that a majority of the workers in the bargaining unit were likely to support recognition for collective bargaining, the Union referred to its large majority in membership and stated a membership list could be provided to the CAC on condition that it was not copied to the company.

7. Explaining the reasons for selecting the proposed bargaining unit the Union stated that it was a stand-alone operation within Cofely who operated a contract on the Jaguar Land Rover Plant in Halewood.

8. The Union confirmed that they had not made a previous application for workers in the proposed bargaining unit or a similar unit, nor was there an existing agreement that covered any of the workers in the proposed bargaining unit.

The Employer's response to the Unions' application

9. In its response dated 24 December 2015 the Employer said it had received the Unions' written request for recognition on 16 December 2014 and that it rejected Unite's request but were willing to negotiate. A copy of a letter dated 30 December 2014 was subsequently received from the Employer which stated that it rejected the Union's request but were willing to negotiate to see if there was a basis to put in place a voluntary agreement putting forward suggested dates for a preliminary discussion.

10. The Employer confirmed that it had received a copy of the application form direct from the Union on 16 December 2014.

11. The Employer stated that it did not agree with the proposed bargaining unit because the Jaguar Land Rover site was a very small part of the operations of their Energy Services Business Unit and did not believe it to be compatible with effective management to have a proliferation of small site based collective bargaining agreements. Given the size of their UK business and the fact that it sat as part of an international business it felt that any bargaining unit should be bigger to permit effective management.

12. The Employer stated that the number of workers employed by Cofely GDF Suez Limited was c.20,000 in the UK and that the Business Unit in question employed c.650 in the UK. The Employer also stated that it did not agree with the number of workers in the bargaining unit as defined in the Union's application as their records suggested that there were 29 employees including one supervisor and one manager.

13. As to whether it disagreed with the Union's estimate of membership in the proposed bargaining unit the Employer stated that it did not understand the levels of

membership to be as high as was claimed, however, subscriptions were not paid by check-off so was unaware of what levels of membership there were. The Employer stated that it wished to understand more about the membership but their primary point was unaffected by such information as they did not see the bargaining unit proposed as being an appropriate bargaining unit for the summary reasons stated.

14. As to whether a majority of the workers in the proposed bargaining unit would be likely to support recognition, the Employer stated that it had no information on membership and should the issue become relevant would like there to be a ballot to establish if there was support. The Employer stated that the employees currently had different terms and conditions and if it moved to collective bargaining it would need to move to more homogenised terms.

15. The Employer submitted that there was no existing agreement for recognition in force covering workers in the proposed bargaining unit.

Membership and Support Check

16. To assist the determination of two of the admissibility criteria specified in the Schedule, namely, whether 10% of the workers in the proposed bargaining unit are members of the Union (paragraph 36(1)(a)) and whether a majority of the workers in the proposed bargaining unit are likely to support recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit (paragraph 36(1)(b)), the Panel proposed an independent check of the level of union membership in the proposed bargaining unit.

17. It was agreed with the parties that the Employer would supply to the Case Manager a list of the names and job titles of workers within the proposed bargaining unit, and that the Unions would supply to the Case Manager a list of their members within that unit to enable comparisons to be undertaken. It was explicitly agreed with both parties that, to preserve confidentiality, the respective lists would not be copied to the other party. These arrangements were confirmed in a letter dated 7 January 2015 from the Case Manager to both parties.

18. The Case Manager carried out the membership and support check using the information that was received by the Employer and the Union on 7 January 2015. A report of the check was issued to the Panel and to the parties for comment on 8 January 2015. The Panel is satisfied that the check was undertaken appropriately.

19. The membership and support check established that of 29 workers in the proposed bargaining unit, 21 were members of the Union; a membership level of 72.41%. The parties were invited to comment on the results of the membership check and to bear in mind the two admissibility tests set out in para 36 (1)(a) and para 36 (1)(b) in so doing.

Comments on the Case Manager's report

20. No comments were submitted by either party.

21. The Panel notes that the list of 29 workers provided by the Employer contains one whose job title includes the word 'manager' and another 'supervisor'. It is possible therefore that the proportion of Union members in the bargaining unit as proposed by the Union (which excludes management) is slightly higher than revealed in the check.

Considerations

22. In determining whether to accept the application the Panel must decide whether the admissibility and validity provisions referred to in paragraph 4 above are satisfied. The Panel has considered carefully the submissions of both parties and all the evidence in reaching its decision.

23. The Panel is satisfied that the Union made a valid request to the Employer within the terms specified in paragraphs 5 to 9 of the Schedule and that its application was made in accordance with paragraph 12. Furthermore, the Panel is satisfied that the application is not rendered inadmissible by any of the provisions in paragraphs 33 to 35 and paragraphs 37 to 42 of the Schedule.

24. The remaining issues for the Panel to decide are whether the admissibility criteria contained in paragraph 36(1)(a) and paragraph 36(1)(b) are met.

Paragraph 36(1)(a)

25. In accordance with paragraph 36(1)(a) of the Schedule the Panel must determine whether or not members of the Union constitute at least 10% of the workers in the Union's proposed bargaining unit. The check of Union membership in the proposed bargaining unit as conducted by the Case Manager on 8 January 2015 established that Union membership stood at 72.41%. The Employer did not seek to challenge this finding. The Panel is therefore satisfied that this test is met.

Paragraph 36(1)(b)

26. Under paragraph 36(1)(b) of the Schedule an application is not admissible unless the Panel decides that a majority of the workers constituting the proposed bargaining unit would be likely to favour recognition of the union as entitled to conduct collective bargaining on behalf of the bargaining unit.

27. The Employer did not comment on this issue. The Union did not provide any additional evidence of support for recognition, such as a petition, but the Panel considers that, in the absence of evidence to the contrary, union membership provides a legitimate indicator of the views of the workers in the proposed bargaining unit as to whether they would be likely to favour recognition of the Union. Although there may be some Union members who would not favour recognition in this particular case the membership constitutes over 70% of workers in the bargaining unit. On the basis of the evidence before it the Panel has decided that, on the balance of probabilities, a majority of the workers in the proposed bargaining unit would be likely to favour recognition of the Union as entitled to conduct collective bargaining on behalf of the bargaining unit, as required by paragraph 36(1)(b) of the Schedule.

Decision

28. The Panel is satisfied that the application is valid within the terms of paragraphs 5 to 9, is made in accordance to with paragraph 12 and is admissible within the terms of paragraphs 33 to 42 of the Schedule. The application is therefore accepted by the CAC.

Panel

Professor Linda Dickens MBE,

Mr Bill Lockie

Mr Gerry Veart

16 January 2015